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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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October 2, 2001

VIA HAND DELIVERY

DOCKET FILE COPY ORIGINAL

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Cordova Telephone Cooperative, Inc. Petition for Limited Waiver of
Sections 20.18(e) and (g) of the Commission's Rules;
CC Docket 94-102 /**

Dear Ms. Salas:

Transmitted herewith, on behalf of Cordova Telephone Cooperative, Inc., is the original copy of the "Declaration of Paul Kelly" to be associated with the above referenced petition which was filed on September 21, 2001. For administrative ease and in proof of timely filing, the date-stamped copy of the petition is attached hereto.

If you have any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,

Michael R. Bennet

Michael R. Bennet


Enclosures

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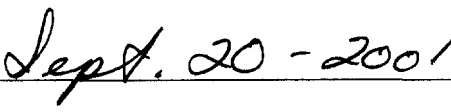
DECLARATION OF PAUL KELLY

I, Paul Kelly, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Cordova Telephone Cooperative, Inc.
2. I have read the foregoing "Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules. I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Paul Kelly



Date

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules)
To Ensure Compatibility with)
Enhanced 911 Emergency Calling Systems)

CC Docket No. 94-102

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SEP 21 2001

To: Wireless Telecommunications Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Cordova Telephone Cooperative, Inc. Petition for Waiver
of Sections 20.18(e) and (g) of the Commission's Rules

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SUMMARY

Cordova Telephone Cooperative, Inc. ("Cordova") seeks a temporary waiver of the Federal Communications Commission's rules governing the timeframes for deployment of Phase II E911 services. Vendor delays in the availability and delivery of Phase II compliant hardware upgrades and Phase II capable handsets will prevent Cordova from complying with the October 1 deadline for beginning to sell and activate ALI-capable handsets. In addition, the extreme, unique and limited nature of Cordova's service area and customer base make a switch upgrade necessary for Phase II compliance both impractical and cost prohibitive at this time.

For these reasons, Cordova seeks a waiver of the deadline to begin selling and activating handsets until October 1, 2004, and it requests that the 25 percent benchmark be extended until December 31, 2004, that the 50 percent benchmark be extended until June 30, 2005, and that the 100 percent benchmark be extended until December 31, 2005. Cordova also requests that the 95 percent penetration rate deadline be extended until December 31, 2008.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's Phase II rules. Denial of the requested waiver would be inequitable. The lack of availability of ALI-capable handsets leaves Cordova with no reasonable alternative other than the filing of this waiver request.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Revision of the Commission's Rules
To Ensure Compatibility with
Enhanced 911 Emergency Calling Systems**

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CC Docket No. 94-102

To: Wireless Telecommunications Bureau

**Cordova Telephone Cooperative, Inc. Petition for Waiver
of Sections 20.18(e) and (g) of the Commission's Rules**

Cordova Telephone Cooperative, Inc. ("Cordova"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby requests a temporary waiver of Sections 20.18(e) and (g) of the Commission's rules.² Cordova is a small, rural carrier serving the Gulf of Alaska and limited surrounding areas. Cordova is fully committed to meeting the emergency needs of its customers and continues to devote substantial resources and personnel to its pursuit of Phase II E911 ("Phase II") compliance. However, due to its unique circumstances, Cordova is unable to comply with the FCC's current Phase II compliance deadlines.

Deployment of Phase II capability has been particularly difficult for Cordova due to obstacles it has faced in its attempts to obtain the Phase II handset, cell site, network signaling, switching and location equipment, and software upgrades necessary to make Phase II a reality prior to the Commission's October 1, 2001 deadline. Specifically, vendor delays in the availability of Phase II compliant network solutions and Phase II capable handsets have made

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. §§ 20.18(e) and (g).

compliance with Section 20.18(g)(1)(i) impossible to date, and make such compliance by October 2001 in Advantage's service area improbable if not unattainable. However, none of these products will even work until Cordova upgrades its analog switch. Without the general availability of Phase II equipment and its switch upgrade, Advantage will be unable to meet the October 1, 2001 deadline in its service area and respectfully requests an extension as outlined below.

I. Due to the Extreme, Unique, and Limited Nature of its Service Area and Customer Base, Cordova Cannot Afford to Meet the FCC's October 1 Deadline

Cordova is a small cellular carrier providing service in rural, Cordova, Alaska and surrounding areas (Alaska RSA 2, Bethel, CMA 316). The town of Cordova, which is just south of Valdez, looks out onto the Gulf of Alaska. Nestled in the southeastern corner of Alaska, Cordova is bordered by the Chugach and Wrangell mountain ranges. Locked between the mountains and the sea, Cordova serves a small base of less than 300 customers. There are no roads in Cordova's service area. The vast majority of Cordova's customers are commercial fishermen and they use their cellular phones for voice communications between boats, and voice communications between boats and shore. Since the United States Coast Guard requires all commercial fishing boats to be equipped with an emergency position indicating radio beacon (EPIRB),³ the cellular phone is a redundant safety feature and is used less for safety and more for convenience.

Cordova also serves a handful of hunters and hikers who generally carry their own personal Global Positioning System ("GPS") technology due to the inherently dangerous nature of the Alaskan wilderness and wildlife. Since Cordova's network is constructed to face the Gulf of Alaska and its commercial fishing customer base, most hunters and hikers wandering into the

³ 46 C.F.R. § 28.150.

uninhabited Alaskan hinterland know that they will not be within contact of any Cordova cell sites. Also, the hunting and fishing industries are seasonal in nature, causing fluctuations in Cordova's customer base.

Cordova is currently using an analog Plexus mobile switch that is incapable of processing Phase II data. Cordova is considering the purchase of a Nortel DMS10 switch when it can afford to upgrade its switch.⁴ However, Cordova simply cannot make an economically rational business case at this time to purchase the \$500,000 Nortel product. With its limited customer base, Cordova would be spending approximately \$1700 per customer to upgrade its switch. This figure does not even include the additional Phase II handset, cell site, network signaling, switching and location equipment, and software upgrade costs that will be added on when Cordova purchases a Phase II solution. Cordova would have to increase each customer's bill by approximately \$14.00 per month for the next ten years in order to recover its switch upgrade investment (not including interest payments). Since Cordova's customer base is transitory in nature, depending generally upon the fishing seasons, Cordova does not always have twelve billing months in a year from a customer to recover its costs, nor a stable customer base to rely upon for steady revenue.⁵

⁴ Cordova has investigated the potential product offerings of many different Phase II vendors in addition to Nortel, including those offered by Tendler, SCC Communications, Technocom Corporation, GTE Telecommunications Services, Cell-Loc, True Position, US Wireless, and SigmaOne Communications Corporation. Cordova will eventually purchase the Nortel product based on the small scale of the Nortel DMS10 (10,000 ports) and because the Nortel Phase II solution appears to be the most robust solution.

⁵ The commercial fishing industry in Alaska is divided into two seasons according to the type of fish to be caught and the regulations regarding catch quotas. These seasons often change slightly when necessary. There is an "A" season during the winter (starting in January) and a "B" season during the summer and ending at the beginning of winter. The "A" winter season is the most popular of the two fishing seasons and usually when Cordova's customer base is at its highest.

As it stands now, Cordova makes a limited profit off of its cellular service and will forgo this minimal profit rather than risk the financial survival of Cordova's vital landline telecommunications services with a prohibitively expensive switch upgrade. If the increased cost of service resulting from a switch upgrade were to increase the safety of its customers, then Cordova might be able to justify to its customers the increased cost. However, since the fishing fleet boats are required by law to carry radio beacons, automatic location information ("ALI")-capable handsets are superfluous. Also, hunters and hikers in Alaska are not the same as tourists who wander from their cars in National Parks in the continental United States and expect to phone for help when they get lost. Hunters and hikers in Alaska are fully aware of the dangers inherent to the Alaskan wilderness and generally carry personal GPS technology when they travel into the mountains where they understand that there is no cellular coverage. Cordova's service area is also devoid of roads, negating the need for emergency recovery of stranded motorists.

II. Cordova Is Unable to Meet the FCC's October 1 Handset Availability Deadline Due to Factors Outside of Its Control

Even if Cordova had a digital Nortel DMS10 switch, it would still be unable to meet the October 1 deadline for selling and activating ALI-capable handsets. To meet the Commission's ALI requirements, Cordova also requires an upgrade to its hardware infrastructure in the form of a Nortel processor, as well as ALI-capable handsets.⁶ As discussed in detail below, vendor-associated delays in delivery of each of these elements will prevent Cordova from meeting its relevant Phase II deadlines in its service area.⁷

⁶ In general, the following hardware and software is needed to transmit Phase II data to PSAPs: IS41C – Dialed Number Trigger, E911 Software, MPC – Mobile Positioning Center, PDE – Position Determining Entity, and receivers at each cell site.

⁷ Cordova has yet to receive a Phase II request from any Public Safety Answering Point.

Due to Cordova's remote location and based on previous experiences, delays in the delivery of hardware can last up to nine months after such hardware first becomes available.⁸ Several wireless carriers have reported in their Phase II waiver petitions that Nortel will not have the necessary upgrades ready until the end of Q1 2002 or the beginning of Q2 2002.⁹ After successful installation of the necessary equipment, Cordova will have to test all of the upgrades – a process that generally takes six to eight weeks.¹⁰ With the unsated demand for Phase II technology building and the large nationwide carriers competing for equipment, Cordova does not realistically expect delivery of the necessary Phase II hardware until at least nine months after the products first appear on the market.¹¹ In fact, even large carriers are reporting six-month lags between the availability of equipment and delivery, installation, and testing.¹²

While Cordova will be unable to process Phase II data without the Nortel switch and Nortel hardware upgrade, even if Cordova had these products in place today, the unavailability of ALI-capable handsets would still prevent Cordova's Phase II compliance. As a small carrier without substantial market clout with vendors, Cordova is forced to base its handset plans on second-hand information on product delivery dates and details of what products will be available for purchase. Even Western Wireless, a huge rural carrier in comparison with Cordova, notes that it "does not have the clout to dictate the production of new handsets with [ALI]

⁸ Cordova's experiences are consistent with those of other carriers. *See, e.g.*, Inland Cellular Petition for Waiver at 6 (small carriers can expect to see generally available technology six to nine months after vendors deliver ALI-capable technology to the large, nationwide carriers). As Inland Cellular pointed out in its waiver petition, small carriers face "unique difficulties and obstacles" when attempting to contact national vendors. Inland Cellular Petition for Waiver at 1.

⁹ *See, e.g.*, Qwest Petition for Waiver at 16.

¹⁰ *Id.*

¹¹ *See, e.g.*, Inland Cellular Petition for Waiver at 6.

¹² *See, e.g.*, Cingular Petition for Waiver at 27.

capability.”¹³ This process makes it difficult for Cordova to accurately predict the date when it can begin selling ALI-capable handsets to its customers. Notwithstanding the lack of vendor-supplied information regarding handset availability dates, information provided by large carriers in their waiver requests suggests the earliest date by which ALI-capable handsets will be available is December 1, 2001.¹⁴ The December 2001 date is consistent with information that Cordova has obtained from vendors and record sources. As Cingular documented in its waiver request, many major handset vendors such as Nokia, Motorola, and Panasonic have effectively abandoned TDMA development efforts.¹⁵ Like many ALI technology vendors, Tendler has noted that it would be delighted to sell its ALI technology if it were readily available. Unfortunately, not only is the Tendler handset solution unavailable at this time, but large carriers are placing orders, pushing small carriers such as Advantage to the back of the line. Even if Tendler were able to commit to a general availability date for its equipment, the economic incentive for Tendler to fill 500,000 Verizon orders rather than a few hundred for Cordova will most certainly lead to additional delays beyond any such date. Cordova, based on its experiences and confirmed by other small carriers,¹⁶ expects a six to nine month delay after vendors first deliver ALI-capable handset technology to the large, nationwide carriers before such equipment is made available to Cordova.

Cordova is aware of only one handset solution that may be commercially available.

According to Airbiquity’s testimony to Congress, its ALI product is commercially available.

¹³ See Western Wireless Petition for Waiver at 12.

¹⁴ See Verizon Petition for Waiver at 14 (December 2001); *see also*, U.S. Cellular Corp. Petition for Waiver at 13 (4th Quarter 2001).

¹⁵ Cingular Petition for Waiver at 20.

¹⁶ *See, e.g.*, Inland Cellular Petition for Waiver at 6.

Cordova has investigated the Airbiquity solution and has ruled it out since it is incapable of working with Cordova's analog network.

Cordova, like many carriers that serve rural areas, has ruled out a purely network-based Phase II solution using currently available technology.¹⁷ Cordova's investigation of network-based solutions has confirmed that triangulation-based location solutions do not work well in less densely populated rural areas, where cell sites are scarce. In fact, the Commission has confirmed the "distinct challenges" that rural carriers such as Cordova face in implementing Phase II requirements.¹⁸ In the Cordova network, an E911 caller is not always within the range of multiple cells. In fact, in the small portion of Cordova's service area that is on dry land, there is no need for cells since it is basically uninhabited and without roads.

III. Cordova Satisfies the Relevant Standards for Waiver of the Commission's Rules

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.¹⁹ The Commission must take a "hard look"²⁰ and then decide if such a waiver is in the public interest.²¹ The Commission has already recognized that wireless carriers may face difficulties in meeting the October 1, 2001 deadline to comply with Sections 20.18 (e) and (g) of its rules. In the FCC's *Fourth Memorandum Opinion and Order* ("Fourth MO&O"), the Commission recognized that there would be instances when "technology-related issues" or "exceptional circumstances" would cause a delay in a wireless carrier's ability to meet the

¹⁷ See, e.g., Verizon Petition for Waiver at 33.

¹⁸ See, generally, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fifth Memorandum Opinion and Order, 15 FCC Rcd. 22810, ¶ 21 (2000) ("Fifth MO&O").

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Wait Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²¹ *Northeast Cellular Telephone Company, L.P., et al v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

October 1, 2001 deadline to become Phase II compliant.²² Such recognition is consistent with the Commission's acknowledgement that "bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps."²³ Manufacturers, although racing to meet carrier demand, have yet to overcome the technological complexities in order to make ALI-capable handsets available in time for carriers to meet the FCC's deadlines. The requested waiver is consistent with the Commission's recognition that compliance deadlines should be linked to the availability of manufacturer equipment.²⁴

The Commission also indicated that a petition for waiver must be "specific, focused and limited in scope, and with a clear path to full compliance."²⁵ Cordova's waiver petition is specific, narrow in scope, and provides the Commission with Cordova's efforts and future plans to satisfy the FCC's Phase II requirements. Moreover, as set forth below, the instant petition satisfies the applicable waiver standards.

Section 1.925(b)(3) of the Commission's rules sets out the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau proceedings:

The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

²² *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442 at ¶ 43 (2000) ("*Fourth MO&O*").

²³ GARMIN International, Inc., *Order on Reconsideration*, DA 01-851 at ¶ 5.

²⁴ See, e.g., *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment*, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (modifying a proposed compliance deadline to account for the unavailability of necessary equipment).

²⁵ *Fourth MO&O* at ¶ 44.

- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁶

Under both of these standards, grant of the requested waiver is warranted. The underlying purpose of the Commission's Phase II rules in Section 20.18 is the public safety of users of wireless phones. In Cordova's case, any incremental public safety benefits that its cellular phones bring to its customer base already equipped with emergency radio beacons would be frustrated absent grant of a waiver since Cordova would cease to offer its service. In addition, it would clearly be unduly burdensome for Cordova to spend over \$1700 per customer in order to become Phase II compliant – this expenditure would effectively put Cordova out of business.

Even if Cordova could make an economically rational decision to purchase the Nortel DMS10, application of the Section 20.18(g) handset deadline to Cordova would be inequitable in light of the lack of availability of ALI-capable handsets, a factor outside of Cordova's control. The unavailability of such handsets, combined with the technical incompatibility of a network-based solution in the vast majority of its service area, leaves Cordova with no reasonable alternative but to seek a waiver.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's Phase II rules in Section 20.18. The Commission's extension of the original March 1, 2001 implementation date to October 1, 2001 balanced the need for an expeditious rollout of Phase II services with the Commission's recognition that Phase II chip manufacturers such as QUALCOMM had been experiencing delays, making compliance by the original deadline infeasible.²⁷ In setting the October 1 deadline, the FCC relied on the

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ *Fourth MO&O* at ¶ 33.

anticipated availability of the necessary equipment. As discussed herein, it is now clear that the handset equipment required to meet the October 1 deadline will not be available in time to allow Cordova to meet this deadline. A temporary waiver of Section 20.18(g)(1)(i) is entirely consistent with the underlying purpose of the establishment of the October 1 deadline.

Not only is a waiver consistent with the underlying purpose of the Commission's Phase II rules in Section 20.18, but denial would undoubtedly frustrate the underlying purpose of the rule. Specifically, if the waiver is not granted, Cordova will cease to offer cellular service. A total unavailability of service will eliminate whatever incremental safety benefits, as well as other public benefits, additional voice communications provide over the fishing fleet's radio beacons.

IV. Schedule for Compliance

Cordova requests a waiver, based upon the following timetable, of the FCC's October 1, 2001 deadline to "begin selling and activating" handsets and the Commission's related benchmark deadlines contained in Section 20.18(g). Cordova's schedule is based on its desire to continue providing cellular service to its unique customer base that uses Cordova's phones for convenience rather than safety. Based upon its own inquiries and confirmed in other carriers' waiver requests, Cordova believes the earliest and most optimistic date by which the large, nationwide carriers will see delivery of ALI-capable handsets is by December 2001. Accounting for expected delays before such handsets reach a small carrier such as Cordova and necessary testing, Cordova would not expect to be capable of selling and activating handsets prior to October 2002 even if it had the Nortel switch in place. Since Cordova's market does not support the purchase of a digital switch at this time, Cordova needs an extension of the Commission's deadline to allow for either market conditions to change or for the eventual obsolescence of Cordova's Plexus switch. While Cordova has no way of knowing if and when its market will

change or when it will no longer be able to rely upon its analog switch, Cordova can be reasonably certain that it cannot afford to purchase the Nortel DMS10 for at least three years without risking its financial survival. Accordingly, Cordova requests that the deadline for Cordova to begin selling and activating handsets be extended to October 1, 2004, the 25 percent benchmark be extended until December 31, 2004, that the 50 percent benchmark be extended until June 30, 2005, and that the 100 percent benchmark be extended until December 31, 2005. Cordova also requests that the 95 percent penetration rate deadline be extended until December 31, 2008.

V. Conclusion

Based on the foregoing, Cordova respectfully requests that the Commission grant Cordova a temporary waiver of Sections 20.18(e) and (g) of its rules and permit Cordova to implement its Phase II solution based on the schedule set forth herein.

Respectfully submitted,

**CORDOVA TELEPHONE
COOPERATIVE, INC.**

By: Michael R. Bennet

Michael R. Bennet
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1000 Vermont Avenue, NW
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202-371-1500

Its Attorneys

Dated: September 21, 2001

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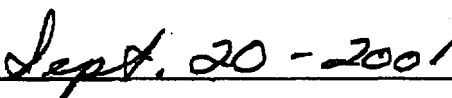
DECLARATION OF PAUL KELLY

I, Paul Kelly, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Cordova Telephone Cooperative, Inc.
2. I have read the foregoing "Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules. I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Paul Kelly



Date

CERTIFICATE OF SERVICE

I, Joy Barksdale, do hereby certify that on this 21st day of September 2001, a copy of the foregoing Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules was served by hand delivery to the following parties:

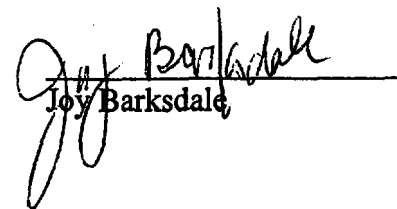
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